

**Response**

Applicant: G. Stephen LeGraw

Serial No.: 09/754,492

Filed: January 4, 2001

Docket No.: S144.101.102

Title: COMMERCIAL COMPANY INFORMATION TRADING SYSTEM AND METHOD

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**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed September 5, 2006. Claims 61-120 were rejected. With this Response, no claims have been amended. Claims 61-120 remain pending in the application and are presented for reconsideration and allowance.

**Claim Rejections under 35 U.S.C. § 103**

The Examiner rejected claims 61-120 under 35 U.S.C. § 103(a) as being unpatentable over Fitzgerald, U.S. Patent No. 6,434,533 (“Fitzgerald”) in view of Read, “Business Brokers Bag Buyers,” Journal of Business, Spokane: May 12, 1994, Volume 9, Issue 9; Section 1; page 1 (“Read”).

Applicant submits that Fitzgerald and Read, either alone, or in combination, fail to teach or suggest the limitations recited by independent claim 61 including **collecting private company information from a user at a first location, the private company information having a confidential data portion, which includes confidential identifying information for a private company that corresponds with the private company information, and an exchange data portion, which is characterized by an absence of confidential identifying information for the private company; and transmitting only the exchange data portion to a central location via the network.**

**Fitzgerald** discloses a method for processing performance data in a data reporting system having a plurality of business entities and a report center in communication with the plurality of business entities. The method includes transmitting by the plurality of business entities to the report center customer performance data indicative of the operation of the business entities during a first day and processing of the customer performance data by the report center to provide processed performance data. The processed performance data includes processed occupancy data, processed average daily rate data and processed RevPAR data. (Abstract).

**Read** discloses that business brokers provide services such as the valuation of a business, research to determine who the most likely and best-qualified buyers are, compilation of the

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company's financial statements, and preparation of a detailed marketing package that tells a comprehensive story about the business and its markets. (Page 3).

Fitzgerald fails to teach or suggest transmitting *only* the exchange data portion to the central location where both the confidential data portion and the exchange data portion are collected from the user at a first location as recited in claim 61. Fitzgerald relates to a method for the exchange, analysis, and reporting of performance data in businesses with time-dependent inventory (Title). More specifically, on a first day, a plurality of business entities transmit customer performance data to a report center, which processes the data to provide processed performance data. The processed performance data is provided to selected business entities on a second day. (See e.g. Abstract). All information, however, including company identifying information, is collected from the customer 600 and sent to the central business 100, more specifically, to the user interface 200 of the business 100. (Col. 6, line 64 – Col 7, line 25; Col. 9, lines 12-20). Fitzgerald makes no mention or suggestion to collect information that is *not* transmitted to the central business 100. Since Fitzgerald teaches that all collected information is sent to central business 100, Fitzgerald fails to teach or suggest *transmitting only the exchange data portion to a central location* where both the confidential data portion and the exchange data portion are collected. Read also fails to teach or suggest this claim limitation.

The Examiner admits the Fitzgerald does not explicitly disclose the steps wherein the private company information includes a confidential data portion, which includes confidential identifying information and wherein the exchange data portion is characterized by an absence of confidential identifying information for the private company. The Examiner submits that Read teaches these claim limitations. (Office Action, page 3).

Read merely discloses preparing two marketing packages including a first "teaser" package and a second more comprehensive package. The "teaser" package is given to a large number of potential buyers and provides basic information about the company for sale, but nothing that would identify the company. The second more comprehensive package includes every bit of information a broker can gather about the company. (Page 5). Fitzgerald teaches away from a combination with Read. Fitzgerald does not teach or suggest withholding company identifying information. Fitzgerald specifically teaches transmission of the company identifying

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information to the central business 100 as is evident by the inclusion of company identifying information (e.g., “Radisson Hotel Memphis,” “Holiday Inn Crowne Plaza,” “Holiday Inn Select,” etc.) in Column 1 of the report, which is derived from the collected information, as illustrated in Figure 8. (Col. 10, lines 38-40).

In addition, it would not have been obvious to one skilled in the art at the time the invention was made to combine Read with Fitzgerald and arrive at the invention recited by independent claim 61. Fitzgerald is specifically related to Time Dependent Inventories (TDI) and the management and pricing of the items within those inventories. In contrast, Read is related to business brokers who are used to sell businesses. Fitzgerald is not related to the sale of businesses. One skilled in the art would not look to a process of using business brokers for selling a business to combine with a method for pricing and selling Time Dependent Inventories. The products being sold and the methods used to sell the products are completely unrelated.

In view of the above, Applicant submits that the above rejection of independent claim 61 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 62-87 further define patentably distinct independent claim 61. Accordingly, Applicant believes that these dependent claims are also allowable over the cited references. Allowance of claims 61-87 is respectfully requested.

In addition, the Examiner admits that Fitzgerald and Read fail to disclose the additional limitations recited by dependent claim 69 including **storing the output data set at the first location**; the limitations recited by dependent claim 71 including **storing the collected information at the first location**; and the limitations recited by dependent claim 72 including **storing the confidential data portion at the first location**. (Office Action, page 5). Despite the differences between claims 69, 71, and 72 and the disclosures of Fitzgerald and Read that were cited by the Examiner, the Examiner nonetheless rejected claims 69, 71, and 72 under 35 U.S.C. § 103(a). Since the Examiner did not cite any other references in rejecting claims 69, 71, and 72, the Examiner appears to be relying on Official Notice. However, as indicated in the Manual of Patent Examining Procedure, “[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being

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well known.” M.P.E.P § 2144.03(A). “It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known.” *Id.* (emphasis in original). Applicant contends that the limitations in claims 69, 71, and 72 that the Examiner appeared to indicate were not disclosed by Fitzgerald and Read are not well known facts that are capable of instant and unquestionable demonstration as being well known. Applicant respectfully requests allowance of these claims, or requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference to teach the further limitations of each claim 69, 71, and 72.

Further, Fitzgerald and Read, either alone, or in combination, fail to teach or suggest the additional limitations recited by dependent claim 74 including **the step of receiving a second exchange data portion from a second user; updating the exchange data set using the second exchange data portion; and transmitting the output data set to the second user**. Fitzgerald discloses preparation of reports specific to each user contributing information. No single report or *output data set* is transmitted to multiple users (i.e., a first user and a second user as recited in claim 74). More specifically, the Market Fair Share Report of Figure 8 lists the user receiving the report first, and the ADR and Occupancy comparison charts of Figures 9A and 9B specifically show how the particular user receiving the report compares to others in the industry. In this manner, all output reports (i.e., output data sets) are tailored for a specific individual user such that the output data sets are immediately comparable and no single report is sent to multiple users. Therefore, Fitzgerald fails to disclose receiving separate data exchange portions from a first and second user and transmitting the same output data set to both the first and second user as recited in claim 74.

In addition, the Examiner admits that Fitzgerald and Read fail to disclose the additional limitations recited by dependent claim 81 including **wherein the asset information includes public business valuation information**; the limitations recited by dependent claim 82 including **wherein the asset information includes private business valuation information**; the limitations recited by dependent claim 83 including **wherein the asset data information includes portfolio information**; and the limitations recited by dependent claim 84 including

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**wherein the asset information includes capital structure information.** (Office Action, page 8). Again, since the Examiner did not cite any other references in rejecting claims 81-84, the Examiner appears to be relying on Official Notice. Applicant contends that the limitations in claims 81-84 that the Examiner appeared to indicate were not disclosed by Fitzgerald and Read are not well known facts that are capable of instant and unquestionable demonstration as being well known. Applicant respectfully requests allowance of these claims, or requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference to teach the further limitations of each claim 81-84.

Further, the Examiner admits that Fitzgerald and Read fail to disclose the additional limitations recited by dependent claim 86 including **collecting public company commercial information from a published public exchange market.** (Office Action, page 9). Again, since the Examiner did not cite any other references in rejecting claim 86, the Examiner appears to be relying on Official Notice. Applicant contends that the limitations in claim 86 that the Examiner appeared to indicate were not disclosed by Fitzgerald and Read are not well known facts that are capable of instant and unquestionable demonstration as being well known. Applicant respectfully requests allowance of this claim, or requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference to teach the further limitations of claim 86.

For similar reasons as discussed above with reference to independent claim 61, Fitzgerald and Read, either alone, or in combination, also fail to teach or suggest the limitations recited by independent claim 88 including **generating a commercial data record from the commercial data information, including a confidential subrecord that identifies the private company and an exchange subrecord; and transmitting only the exchange subrecord via a network communication link to the commercial statistical analysis system; wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.**

In view of the above, Applicant submits that the above rejection of independent claim 88 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 89-105 further define patentably distinct independent claim 88. Accordingly, Applicant believes that these dependent

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claims are also allowable over the cited references. Allowance of claims 88-105 is respectfully requested.

In addition, the Examiner admits that Fitzgerald and Read fail to disclose the additional limitations recited by dependent claim 92 including **storing the collected information at the location of the user**; and the limitations recited by dependent claim 93 including **storing the confidential subrecord at the location of the user**. (Office Action, page 12). Again, since the Examiner did not cite any other references in rejecting claims 92 and 93, the Examiner appears to be relying on Official Notice. Applicant contends that the limitations in claims 92 and 93 that the Examiner appeared to indicate were not disclosed by Fitzgerald and Read are not well known facts that are capable of instant and unquestionable demonstration as being well known.

Applicant respectfully requests allowance of these claims, or requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference to teach the further limitations of each claim 92 and 93.

Further, the Examiner admits that Fitzgerald and Read fail to disclose the additional limitations recited by dependent claim 100 including **wherein the asset information includes public business valuation and other statistical information**; and the limitations recited by dependent claim 101 including **wherein the asset information includes private business valuation and other statistical information**. (Office Action, page 13). Again, since the Examiner did not cite any other references in rejecting claims 100 and 101, the Examiner appears to be relying on Official Notice. Applicant contends that the limitations in claims 100 and 101 that the Examiner appeared to indicate were not disclosed by Fitzgerald and Read are not well known facts that are capable of instant and unquestionable demonstration as being well known. Applicant respectfully requests allowance of these claims, or requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference to teach the further limitations of each claim 100 and 101.

In addition, the Examiner admits that Fitzgerald and Read fail to disclose the additional limitations recited by dependent claim 104 including **defining the exchange data set to include the qualified user exchange data set as a subset of the exchange data set**. Again, since the Examiner did not cite any other references in rejecting claim 104, the Examiner appears to be

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relying on Official Notice. Applicant contends that the limitations in claim 104 that the Examiner appeared to indicate were not disclosed by Fitzgerald and Read are not well known facts that are capable of instant and unquestionable demonstration as being well known. Applicant respectfully requests allowance of this claim, or requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference to teach the further limitations of claim 104.

For similar reasons as discussed above with reference to independent claim 61, Fitzgerald and Read, either alone, or in combination, also fail to teach or suggest the limitations recited by independent claim 106 including **wherein the commercial statistical data set is defined by a lack of information identifying a source of the exchange subrecord.**

In view of the above, Applicant submits that the above rejection of independent claim 106 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 107-112 further define patentably distinct independent claim 106. Accordingly, Applicant believes that these dependent claims are also allowable over the cited references. Allowance of claims 106-112 is respectfully requested.

For similar reasons as discussed above with reference to independent claim 61, Fitzgerald and Read, either alone, or in combination, also fail to teach or suggest the limitations recited by independent claim 113 including **generating a commercial data record from the commercial data information, including a confidential subrecord that identifies the private company and an exchange subrecord; and transmitting only the exchange subrecord via a network communication link to the commercial statistical analysis system; wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.**

In view of the above, Applicant submits that the above rejection of independent claim 113 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 114-119 further define patentably distinct independent claim 113. Accordingly, Applicant believes that these dependent claims are also allowable over the cited references. Allowance of claims 113-119 is respectfully requested.

For similar reasons as discussed above with reference to independent claim 61, Fitzgerald and Read, either alone, or in combination, also fail to teach or suggest the limitations recited by

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independent claim 120 including **generating a private company data record from the private company data information, including a confidential subrecord, which includes confidential identifying information for the private company, and an exchange subrecord, which is defined by an absence of confidential identifying information for the private company; storing the confidential subrecord at the location of the user; transmitting only the exchange subrecord to the statistical analysis system; generating a private company statistical data set using the statistical analysis system based upon the updated exchange data set and the at least one statistical model, wherein the private company statistical data set includes statistical averages for the commercial industry, the statistical averages including at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics, and average operating performance data; and transmitting the private company statistical data set to one or more qualified users, wherein a qualified user is defined as a user who provides exchange subrecords to the statistical analysis system, and wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.**

In view of the above, Applicant submits that the above rejection of independent claim 120 under 35 U.S.C. § 103(a) should be withdrawn. Allowance of claim 120 is respectfully requested.

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**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 61-120 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 61-120 is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Steven E. Dicke at Telephone No. (612) 573-2002, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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